

ST 97-15

Tax Type: SALES TAX

Issue: Audit Methodologies and/or Other Computational Issues

STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
CHICAGO, ILLINOIS

THE DEPARTMENT OF REVENUE)	Case No.
OF THE STATE OF ILLINOIS,)	Reg. No.
v.)	NTL No.
TAXPAYER,)	John E. White
Taxpayer.)	Administrative Law Judge

RECOMMENDATION FOR DISPOSITION

Appearances: David Rollo, Rollo & Tepper, for TAXPAYER
Richard Rohner, Special Assistant Attorney
General, for the Illinois Department of Revenue.

Synopsis:

The Illinois Department of Revenue ("Department") issued a Notice of Tax Liability to TAXPAYER, ("TAXPAYER" or "taxpayer"). The Notice of Tax Liability assessed use tax against taxpayer for purchases and transfers of tangible personal property during an audit period beginning 1/86 through and including 12/92. Prior to hearing, the parties agreed that the sole issue to be determined was whether taxpayer was registered for sales tax purposes during 1990. If the taxpayer was registered, the parties further agreed, no tax would be assessed against taxpayer.

At hearing, taxpayer presented into evidence corporate books and records and the testimony of its president. The Department presented into evidence records of the Department regarding TAXPAYER. Taxpayer and the Department, through counsel, also stipulated to certain

facts, and that stipulation was entered into evidence. I am including in this recommended decision findings of fact and conclusions of law. I recommend the matter be resolved in favor of taxpayer.

Findings of Fact:

1. The audit period covered by the Notice of Tax Liability ("NTL") is 1/86 through and including 12/92. Department Ex. No. 1. The tax assessed against taxpayer is for use tax on purchases made during the period 1/1/91 through 12/31/92. *Id.*
2. At all times during the audit period, taxpayer was engaged in business as a commercial printer. Department Ex. No. 1; Taxpayer Group Ex. No. 4, pp. 4-5.
3. Taxpayer's business was the subject of a prior audit by the Department for purposes of Illinois Retailers' Occupation, Use and other related taxes for tax years beginning 7/1/81 through and including 12/31/85. Taxpayer Group Ex. No. 4, pp. 4-5; Taxpayer Ex. No. 8.
4. After the prior audit was concluded in 1986, a Department employee prepared combined retailers' occupation and related tax returns for taxpayer, which returns were then signed by an officer of taxpayer. Taxpayer Group Ex. No. 4, pp. 4-5; Department Group Ex. No. 2, p. 7; Hearing Transcript¹ ("Tr.") (a.m.), p. 118 (testimony of Department employee Jayne).

¹. The pages of the separate transcripts for the morning and afternoon sessions of the hearing were not consecutively numbered. So, I will cite to the transcript of the hearing in the following manner: "Tr. (a.m.), p. _" or "Tr. (p.m.), p. _."

5. Pursuant to the returns prepared and filed by the Department auditor on taxpayer's behalf, a Department auditor requested that taxpayer be issued a tax registration number for Retailers' Occupation Tax ("ROT") purposes. Department Ex. No. 2, pp. 6-7; Taxpayer Ex. No. 8.
6. As a result of the audit concluded in 1986, and at the Department's request, taxpayer was registered for purposes of sales taxes, assigned an IBT number of XXXXX, and no revocation or other statutory proceedings were commenced by the Department to revoke TAXPAYER's registration. Taxpayer Ex. No. 8.
7. Taxpayer never stopped doing business as a printer from 1986 through and including the audit period at issue in this matter, and the Department had actual knowledge that taxpayer had not stopped conducting business as a printer after the conclusion of the 1986 audit. See Taxpayer Group Ex. No. 6 (consisting of completed Illinois tax forms (IL-W-3's, IL-941's and IL-501's) filed in taxpayer's name and on its behalf during 1988-1990).
8. Since the Department registered taxpayer for sales tax purposes in 1986, it was obliged to issue taxpayer a certificate of registration. Ill. Rev. Stat. ch. 120, ¶ 441a (1985)-(1987).
9. The tax returns the Department auditor prepared and taxpayer signed to conclude the 1981-1985 audit were designated as first and final returns. Taxpayer Ex. No. 4, pp. 4-5.
10. The Department's computer records indicate that on or about 12/10/90, taxpayer's ROT registration was reinstated from inactive status to a quarterly filer, although that change was to take effect on 1/1/91. Taxpayer Ex. No. 6, p. 2; Department

Ex. No. 3, p. 2; Tr. (a.m.), p. 118 (testimony of Department employee Jayne).

11. From at least 12/10/90 through 5/23/94, the Department's computer records indicated that taxpayer's ROT registration was inactive from 12/31/85 through 12/31/90, and that its ROT registration was reinstated effective 1/1/91. Taxpayer Ex. No. 5, p. 2; Department Ex. No. 3, p. 7.

12. In 1994, a Department employee asked to update the Department's computer records regarding taxpayer's registration status. Department Ex. No. 2, pp. 6-7. The Department's computer records were thereafter changed to show that taxpayer's registration was reinstated effective 1/1/86. Taxpayer Ex. No. 1; Department Ex. No. 3, p. 7.

Conclusions of Law:

In 1990, printers registered with the Department could purchase, tax-free, tangible personal property transferred as an incident to providing services to exempt purchasers, whereas unregistered printers could not. See Brief of the Department of Revenue ("Department's Brief"), pp. 1-2. The tax assessed in this case was measured by the cost price of tangible personal property purchased and transferred by taxpayer to exempt purchasers, but which claimed deductible purchases were disallowed because the auditor determined taxpayer was not registered with the Department during 1990. See Department Ex. No. 1. This is not a case where taxpayer failed to show that the customers to whom it transferred property as an incident to providing printing services were, in fact, exempt

purchasers. The only issue is whether taxpayer was registered with the Department for sales tax purposes during 1990.

The *prima facie* case of the Department was satisfied when the Department introduced, under the certificate of the Director, the determination of tax due. Grand Liquor Co. v. Department of Revenue, 67 Ill. 2d 195 (1977); A.R. Barnes v. Department of Revenue, 173 Ill. App. 3d 826, 832 (1st Dist. 1988). The burden then shifted to TAXPAYER to rebut the Department's *prima facie* case by introducing evidence, identified with its books and records, to establish its claim of nonliability. Soho Club, Inc. v. Department of Revenue, 269 Ill. App. 3d 220, 229 (1st Dist. 1995).

As part of its case, taxpayer introduced the Department's stipulation that "taxpayer was registered for purposes of sales taxes in connection with a prior audit of the period 7/1/81 to 12/31/85 and assigned the Registration No. XXXXX and no revocation or other statutory proceedings were commenced by the Department to revoke this registration" Taxpayer Ex. No. 8.

When the Department admittedly registered taxpayer in 1986, section 2a of the Retailers' Occupation Tax Act ("ROTA") did not provide for the automatic expiration of certificates of registration issued by the Department. Ill. Rev. Stat. ch. 120, ¶ 441a (1985)-(1987). Therefore, TAXPAYER's registration could not have expired by operation of law during the period from 1986 to 1990. Compare Ill. Rev. Stat. ch. 120, ¶ 441a (1985)-(1987) with P.A. 86-383 (effective January 1, 1990, amended § 2a of the ROTA to provide for 5 year expiration and automatic renewal of certificates of registration issued by the Department) and 15 Ill. Reg. 6621, 6699-700 (May 3,

1991) (showing changes to 86 Ill. Admin. Code § 130.701 (Subpart G: Certificate of Registration), effective April 17, 1991, due to General Assembly's passage of P.A. 86-383). By the time the automatic expiration and renewal provisions of § 2a became effective in 1991, the Department concedes taxpayer was registered. Department's Brief, pp. 3-4.

Taxpayer also introduced copies of various tax forms it filed with the Department before, during and after 1990, on which it included the IBT number the Department issued to it in 1986. Taxpayer Ex. No. 6. Taxpayer's president testified that TAXPAYER continued to be engaged in business as a commercial printer after 1986, and through 1990 (see Tr. (a.m.), pp. 21-42), and his testimony was supported by taxpayer's books and records introduced at hearing. Taxpayer Ex. No. 6.

Taxpayer also introduced a June 1, 1990 letter from the Department in which the Department advised TAXPAYER that the Department did not "have all the information required to register [taxpayer] to do business in Illinois." Taxpayer Ex. No. 3. In response to that letter, TAXPAYER's witness at hearing supervised the completion of an application for Illinois Business Registration, and had that application filed with the Department. Taxpayer Ex. No. 2; Tr. (a.m.), pp. 28-31. A copy of that completed and filed application was introduced at hearing. Taxpayer Ex. No. 2. Taxpayer Exhibit No. 2 shows that TAXPAYER's application was received by the Department on November 27, 1990, and the first page of that exhibit is stamped "REINSTATED". Taxpayer Ex. No. 2. Presumably, that stamp was affixed on or shortly after the Department received the

application. The handwritten words "complete app already on file" also appear on the first page of that application, and the handwritten words "already reg" appear twice on page 3 of the exhibit. *Id.*; Tr. (a.m.), pp. 29-31. The evidence surrounding the making and maintenance of Taxpayer Exhibit No. 2 leads me to conclude that a Department employee made those handwritten entries. Taxpayer Ex. No. 2; Tr. (a.m.), pp. 29-31. Even if taxpayer had not been registered with the Department in 1986, it was certainly registered by November or December of 1990.

Finally, taxpayer introduced a copy of a recent printout of the Department's central registration computer records regarding taxpayer's registration status. Taxpayer Ex. No. 1. That printout, dated 4/26/95, indicates the Department's central registration records were changed to show that taxpayer's registration, which had previously been designated "inactive" from 12/31/85 through 1/1/91, was currently designated as having been reinstated on 1/1/86. Taxpayer Ex. No. 1.

I conclude that taxpayer rebutted the *prima facie* correctness of the Department's determination that taxpayer was not registered during 1990. It did so, I believe, merely by offering the Department's stipulation that it registered taxpayer for sales tax purposes in 1986, and that TAXPAYER's registration was never revoked by the Department. By operation of law then in effect, TAXPAYER's registration would have been valid in 1990. Ill. Rev. Stat. ch. 120, ¶ 441a (1985)-(1987); P.A. 86-383 (effective January 1, 1990); 15 Ill. Reg. 6621, 6699-700 (May 3, 1991). Once taxpayer rebutted the *prima facie* correctness of the Department assessment, the burden

shifted back to the Department to prove its case by competent evidence. Goldfarb v. Department of Revenue, 411 Ill. 573, 580 (1952); Soho Club, Inc. v. Department of Revenue, 269 Ill. App. 3d at 229.

Even though it concedes TAXPAYER was registered in 1986, the Department argues that TAXPAYER was not registered during 1990 because TAXPAYER's registration was inactive for sales tax purposes until reinstated effective 1/1/91. Department's Brief, pp. 1-3. That argument begs the questions -- how and why was TAXPAYER's registration rendered "inactive"? I know of no statutory authority permitting the Department to decide, unilaterally, to treat a registered taxpayer's registration status as inactive. Nor did the Department ever attempt to explain why it recorded TAXPAYER's registration as being inactive from 1986 through 1990. The Department registered taxpayer for sales tax purposes in 1986, TAXPAYER's registration had not expired nor had it been revoked, and taxpayer was still actively engaged in the printing business. I conclude the entry in the Department's computer records that taxpayer's registration was inactive did not affect the validity of TAXPAYER's status as a registered taxpayer.

The Department's computer records, moreover, were later changed to show that TAXPAYER's registration was reinstated effective 1/1/86. Taxpayer Ex. No. 1. The Department argues I should disregard that update, because it was made merely to process the audit from which the NTL at issue originated. See Department's Brief, pp. 2-4. I disagree, strongly. That recent entry in the Department's computer records is inconsistent with the Department's argument at hearing,

and I consider it substantive evidence that taxpayer was registered with the Department during 1990. See Cook County Treasurer v. Ford Motor Co., 166 Ill. App. 3d 373 (1st Dist. 1988) (contradictory statements of a party constitute substantive evidence against the party of the facts asserted), *aff'd*, 131 Ill. 2d 541 (1989). I understand the update as the Department's correction of its prior error in recording that taxpayer's registration was "inactive" from 1/1/86 through 12/31/90.

The Department also argues that since taxpayer did not file returns with the Department in 1990, it should not be heard to argue that its registration was active. See Department's Brief, p. 3. That argument is not persuasive. The universe of persons who fail to file tax returns is not limited to unregistered taxpayers. The remedies available to be used to achieve compliance with Illinois tax laws include assessment for unpaid tax due (plus statutory penalties and interest), revocation, lien and/or injunction. An IBT number already issued to a registered taxpayer, however, is not by operation of law rendered void, "inactive" or constructively revoked simply because the registrant fails to file returns. 35 **ILCS** 120/2b.

Conclusion

Taxpayer rebutted the Department's *prima facie* case by introducing evidence identified with its books and records that it was registered with the Department for sales tax purposes during 1990. The Department, thereafter, did not show that taxpayer was not registered during 1990. Pursuant to the parties' stipulation, I

recommend the Director revise the amount of NTL no. XXXXX to show no tax liability, and that he finalize the NTL as revised.

John E. White
Administrative Law Judge